Office-Supreme Court, U.S.
FILED
MAR 18 1985
ALEXANDER L. STEVAS,
CLERK

84-1464

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners,

vs.

SUPREME COURT OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

EDWARD RONWIN
P.O. BOX 3585
Urbandale, Iowa 50322
(515) 223-8819
Petitioner pro se

DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ and BRUCE G. MOUNTAIN,
974-73rd Street,
West Des Moines, Iowa 50265
(515) 223-6000
Petitioners pro se

4499

QUESTIONS PRESENTED FOR REVIEW

I. Is the mandatory Interest on Lawyers Trust Accounts program instituted by Respondent Court in the State of Iowa in violation of the Fifth and Fourteenth Amendments, U.S. Constitution, since the interest earned on client and attorney's funds in said trust accounts are taken by said Court without permission or even knowledge of the client and without permission of the attorney?

II. Does the declaration of a mandatory Interest on Lawyers Trust Accounts program by Respondent Court violate the constitutional principle of separation of powers of the three branches of government?

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Table of Contents	i
Table of Authorities	ii

TABLE OF CONTENTS-CONT'D

	Page
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions	2
Statement of the Case	3
Reasons for Granting the Writ	5
I. The Taking of the Interest on Rule 9-102 (C)(1) Accounts by Respondent's Commission Violates the Fifth and Fourteenth Amendments	8
II. Institution of Iowa's Mandatory IOLTA Constitutes an Unconstitutional Exercise of Power by Respondent Court	15
Conclusion	18
Appendix	

TABLE OF AUTHORITIES

	Page
Cases	
Reconstruction Finance Corp. v. Diehl, 229 Ia. 1276, 296 N.W. 385 (1941)	16,17
Walker v. State of Georgia, 417 F.2d 5 (5 Cir. 1969)	9

TABLE OF AUTHORITIES-CONT'D

	Page
Webbs Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)	9,10, 11,12 13

Constitution, Statutes and Rules

United States Constitution,	
Fifth Amendment	2,8,14,15,17
Fourteenth Amendment	2,8,15,17
Iowa Constitution,	
Art.1, §18	15,17,18
Art.3, §1	3,18
Art.3, §30	16,18
Art.5, §4	15

No. ___

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners,

vs.

SUPREME COURT OF IOWA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

OPINIONS BELOW

Respondent entered an Order on December 28,1984 establishing a mandatory Interest on Lawyers Trust Accounts ("IOLTA") program, which Petitioners, all pro se, and who are all practicing attorneys in the State of Iowa, had opposed by written brief and in oral argument. The Order is

reproduced in the Appendix.

JURISDICTION

This Petition is filed within 90 days after December 28, 1984. This Court's jurisdiction is invoked pursuant to 28 U.S.C.§ 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution,

Fifth Amendment:

No person shall..be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment:

Section 1. ...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;...

State of Iowa Constitution,

Article III, Section 1.

The powers of the government of Iowa shall be divided into three separate departments--the Legislature, the Executive, and the Judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

Rules of the Iowa Supreme Court,

Rules of the Iowa Supreme Court, as amended, to establish a mandatory IOLTA.

Said rules are reproduced in the Appendix as they are a part of Respondent's Order entered December 28, 1984.

STATEMENT OF THE CASE

On September 25, 1984, a brief was circulated by the Iowa State Bar Association ("ISBA") and its Committee on Interest on Lawyers Trust Accounts ("Committee") to

practicing attorneys informing them of the nature and alleged justification for the proposed mandatory IOTLA. On October 12, 1984, Respondent entered an Order inviting briefs in comment on the IOLTA; inviting requests to be orally heard and setting oral argument for December 12, 1984. Petitioners filed a brief in opposition to said IOLTA on November 26, 1984. By Order entered December 4, 1984, Petitioner Ronwin was granted permission by Respondent to argue in opposition. On December 12, 1984, oral argument was held. On December 28, 1984, pursuant to an unspecified majority, Respondent Court entered the Order reproduced in the Appendix (A-1, et seq.). Said Order adopted a mandatory IOLTA for the State of Iowa (A-4) and presented the rules and format under which said program would operate (A-8) from and after July 1, 1985 (A-6).

REASONS FOR GRANTING THE WRIT

The essential features of Iowa's IOLTA are:

1. The program is mandatory and requires that all client trust funds, except retainer fees paid on a regular or continuing basis, be deposited in interest-bearing accounts (A-8) such as the Negotiable Order of Withdrawal ("NOW") type accounts.

2. Two basic accounts are required:

(a) A pooled, interest-bearing account for small sums received from clients or large sums received but destined to be retained for very short and unspecified periods of time, Rule 9-102(C)(1)(A-11); and,

(b) A separate interest-bearing account(s) for each client from whom sums are received and to whom interest earned thereon shall be paid to the client, Rule 9-102(C)(2)(a)(A-11), or pooled accounts for which sub-accounting is provided and from which interest earned shall be paid to each client represented in

the pool according to the earnings of each, Rule 9-102(C)(2)(b)(A-12).

These latter accounts are for accounts where the principal is so large and will be held for such long periods as that the interest earned will be significant, but the rules fail to set forth specific parameters; rather, the choice of account falls upon the lawyer's or firm's collective conscience and prudence, Rule 9-102(C)(3)(A-12).

If the client's funds are required to be placed in a 9-102(C)(1) account, the lawyer or firm is obligated pursuant to Rule 9-102 (C)(4)(a),(b), (A-13), to order the depository institution to disperse the interest earned, less service charges, to the Lawyers Trust Account Commission ("Commission") and to transmit therewith data concerning the amount and the account from which the funds have been dispersed (A-13). In addition, said Commission will be filing reports, making grants and overseeing the IOLTA program,

Rule 9-102(C)(5)(A-14).

Iowa's IOLTA rules (A-8-15) do not allow for non-interest bearing trust accounts. Furthermore, clients need not be told what is happening to their funds, Rule 9-102(C)(1),(A-11), and, if clients are informed by their attorney, clients are totally deprived of the right to decide: whether or not they wish to have their funds kept in an interest, or non-interest bearing account, and, if the former choice is elected and the amount places the account in the 9-102(C)(1) category, whether or not they wish to forego the interest earned and allow same to be paid to said Commission.

The net effect of Iowa's IOLTA rules is that the interest on Rule 9-102(C)(1) accounts, which is generated by the principal of clients, is transmitted to said Commission for use in the discretion of said Commission, and the transmission of said interest can be done without the client's

knowledge and/or regardless of the client's wishes.

Despite the language of Rule 9-102(A),(A-8), it is possible that interest earned on such funds as belong to the attorney but which are on deposit in a 9-102(C)(1) account will also be taken by said Commission, without the attorney's consent.

Both takings, i.e., the interest earned on client's principle with or without the client's knowledge but without the client's consent, and the same taking of the attorney's interest with his knowledge but without his consent, are repugnant to the Fifth and Fourteenth Amendments, U.S. Constitution.

Equally repugnant to our constitutional framework is Respondent Court's failure to defer to the principle of the separation of powers between the branches of government.

I. The Taking of the Interest on Rule 9-102 (C)(1) Accounts by Respondent's Commission Violates the Fifth and Fourteenth Amendments.

ISBA has asserted that the case of Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980), "..was limited to the narrow circumstances presented and the rationale is inapplicable to the IOLTA concept now before [Respondent] Court," (ISBA brief below at 9), because a substantial sum ($1,812,145.77) was deposited in the interest-bearing account for approximately 1 year and substantial interest in excess of $100,000 was earned thereon,(ISBA brief at 9).

However, unless this Court, Walker v. State of Georgia, 417 F.2d 5, 8 (5 Cir. 1969):

> ...expressly limits its opinion to the facts before it, it is the principle which controls and not the specific facts upon which the principle is decided...

In Beckwith, this Court's task was to determine whether a taking of all interest in excess of $100,000 on the principal, 449 U.S. at 160:

> ...amounted to a 'taking'--it was obviously uncompensated--within the Amendments' [Fifth and Fourteenth] proscription...(bracketted phrase added).

Further, this Court held, 449 U.S. at 160-161:

> The principal sum deposited in the registry of the court plainly was private property, and was not the property of Seminole County....(citations omitted)..

Under Iowa's IOLTA, the principal sum in the 9-102(C)(1) trust accounts, as in the registry of the Florida Circuit Court in Beckwith, remains private property; i.e., the property of the clients and the interest that is planned to be taken under IOLTA by said Commission will not be compensated, as in Beckwith.

This Court brushed aside the notion that the interest earned was a "mere unilateral expectation or an abstract need," and held that the deposited funds was property "held only for the ultimate benefit of Webb's creditors, not for the benefit of the [Florida Circuit] court and not for the

benefit of [Seminole] county," 449 U.S. at 161.

That the property right (accruing to creditors in Beckwith) might not be immediately exercisable did not bar an entitled claimant from "claiming a proper share of the interest, the fruit of the fund's use, that is realized in the interim," 449 U.S. at 162. (emphasis added).

The cardinal principle is that, 449 U.S. at 162-163:

> The usual and general rule is that any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal, (numerous citations omitted).

Thus, the principal, pooled or otherwise, under Iowa's IOLTA remains the private property of the respective clients and if any interest were earned thereon, (which is easily calculated)[1] that interest down to

[1] With the following readily available information, the calculation of interest earned by a client's principal is easily performed with a small, hand-

the last penny belongs to the respective clients even if the clients cannot order the immediate withdrawal of the principal and/or interest, Beckwith. Furthermore, as with the second interest taking in Beckwith, the Iowa IOLTA's proposed taking of interest would not be either for "services rendered" or for any compensatory deed, 449 U.S. at 162, but an unabashed taking which relies for its legality on the argument that it is not practicable to allocate earnings [on principal of] individual clients [in pooled accounts], (ISBA's brief, at 8), even though it is easily done with a pocket calculator (and certainly can be done with computorized sub-accounting)[1]; ergo, the client "is not being deprived of any income" and "no private property right

1-Continued:
held calculator: the rate of interest; the days of deposit; the amount of deposit; the bank's monthly fees and any allocation thereof (which allocation the attorney can decide) to each deposited fund in a pooled account; the specific charges for each item of service such as for a check deposited or a check debited.

...is lost," (ISBA brief at 8-9). Similar hyperbole was rejected in Beckwith, 449 U. S. at 163.

IOLTA's justification does not convert the private principal nor the interest earned thereon to "public property," and since such taking is in no way compensated by "services rendered" or otherwise, it is just as unconstitutional as Seminole County's second taking in Beckwith.

The mandatory exaction being attacked here, as the exaction in Beckwith, does not "...adjust the benefits and burdens of economic life to promote the common good..," 449 U.S. at 163. Rather, as in Beckwith, the exaction violates the Fifth and Fourteenth Amendments by "...forcing some people [clients and attorneys] alone to bear public burdens [aid to the "poor"] which, in all fairness and justice, should be borne by the public as a whole," Beckwith, 449 U.S. at 163.

The essential point is eloquently explained in Beckwith, 449 U.S. at 164:

> Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as "public money" because it is held temporarily by the court. The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property. The state statute has the practical effect of appropriating for the county the value of the use of the fund for the period in which it is held in the registry. (emphasis added).
>
> To put it another way: a State, by ipse dixit, may not transform private property into public property without compensation, even for the limited duration of the deposit in court. This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent. That Clause stands as a shield against the arbitrary use of governmental power.

Likewise, the Respondent Court cannot, consonant with the Fifth Amendment, convert by ipse dixit; i.e., by its Order creating a mandatory IOLTA (App.), the client's trust fund principal and/or interest earned thereon into public property. While a voluntary

IOLTA program might pass muster under the Fifth and Fourteenth Amendments, Iowa's mandatory IOLTA program fails to do so.

II. Institution of Iowa's Mandatory IOLTA Constitutes an Unconstitutional Exercise of Power by Respondent Court.

Petitioner's brief below stated at 12:

> The problem of providing adequate legal services for the 'poor' is a socio-political question. The divisions of government properly concerned with such questions are the Legislature and the Executive branches. If monies are needed, the Legislature, not the Court, can tax; and if a program needs to be administered to aid the 'poor,' the Executive, not [Respondent] Court, is the proper body for that purpose.

No section of the State of Iowa Constitution, nor any statute in the Iowa Code, endows Respondent Court with the power to tax or to condemn property. Said powers are not included in the clause reciting Respondent's jurisdiction in the Iowa Constitution, Art. 5,§4. Art. 1,§18, Iowa Constitution, which provides as does the Fifth Amendment, that private property shall not be taken for

public use without just compensation clearly indicates in its subsequent provisions that the Iowa Legislature is the body that may by law, prescribe the conditions governing condemnations. The proscription on the passage of local and special laws, "for the assessment and collection of taxes for State, County and road purposes," Art. 3, §30, Iowa Constitution, clearly recognizes the Iowa Legislature's power to levy general, state-wide taxes. Even Respondent acknowledged in Reconstruction Finance Corp.v. Diehl, 229 Iowa 1276, 296 N.W. 385, 390 (1941), that:

> The power of taxation is generally a legislative, not a judicial, function..

In the Diehl case, the lower Iowa Court (the District Court) was given the right to allot assessments involving drainage districts, but said "taxing power", which Respondent described as "..not a judicial function..," 296 N.W. at 390, was merely

ancillary to the statutory scheme whereby the District Court was given power to "adjudicate all rights and issues between the drainage district and [others]...," 296 N. W. at 390. Only within such a statutory scheme, or in the context of a specific "case or controversy" requiring adjudication, can Respondent Court order a transfer of property or declare an exaction from one party or from the state or any of its subdivisions to another party or to the state or its subdivisions.

As demonstrated above, the mandatory exaction in instant cause, whether it be considered a tax or a condemnation, is beyond the power of Respondent Court to order, but having done so by its Order (App.), Respondent Court violates both United States and Iowa Constitutional provisions,Fifth and Fourteenth Amendments, U.S. Constitution; and Art. 1, §18, Iowa Constitution; and violates the constitutional principle of

the separation of powers of the three branches of government, Art. 3, §1, Art. 1, §18 and Art. 3, §30, Iowa Constitution.

CONCLUSION

The mandatory exaction at issue here is either an unconstitutional tax or an unconstitutional condemnation and, in any event, Respondent's Order of December 28, 1984 (App.) violates the constitutional principle of the separation of the powers of the three branches of government.

Wherefore, the Writ sought here should be granted.

Respectfully submitted

Edward Ronwin

David L. Wetsch

Mike Christensen

James D. Birkenholz

Bruce G. Mountain

petitioners pro se
Attorneys at Law (Iowa)

Box 3585
Urbandale, Iowa 50322
(515) 223-8819

and

974-73rd Street
West Des Moines, Iowa 50265
(515) 223-6000

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE PETITION OF THE IOWA STATE BAR ASSOCIATION, A Corporation, FOR AMENDMENT OF DR 9-102 AND TO ENACT A NEW DR 9-103 OF THE CODE OF PROFESSIONAL RESPONSIBILITY RELATING TO TRUST FUNDS, AND FOR ESTABLISHMENT OF A LAWYER TRUST ACCOUNT COMMISSION.	No. 84-1641 ORDER

The petition of the Iowa State Bar Association (ISBA) for establishment of an Interest on Lawyer's Trust Account (IOLTA) program in Iowa has been duly submitted to the court upon notice and hearing in accordance with prior orders. The background for the proposal is explained in the ISBA petition. Comments, objections and briefs from interested parties have been received and considered. A majority of the court now has determined that the ISBA petition should be granted and that an IOLTA program should be established in Iowa as provided in this order.

We first address the main issues relevant to this determination. They relate to the

need for the program, its constitutionality, its ethical status, its mandatory nature, and the particular model adopted in Iowa.

A critical need exists in Iowa for legal services to the poor in civil cases. In addition, various other needs exist including educational and other specific law-related programs designed to improve the administration of justice in Iowa. All needs to be addressed are public needs, and all disbursements would be for tax-exempt public purposes within Internal Revenue Service Guidelines assuring the tax-exempt status of funds.

The constitutionality of a mandatory IOLTA program has been determined in In re Petition of Minnesota State Bar Association, 332 N.W. 2d 151, 158 (Minn. 1982), and in an order of the Washington Supreme Court of June 19, 1984, adopting an IOLTA program for that state. We adopt the reasoning of those courts in rejecting the identical constitutional argument raised by objectors in this case. In short,

an IOLTA program of the kind involved here does not take client property because the fund is derived only from interest on pooled accounts where individual client principal is so small or held for such a short period of time that transaction and maintenance costs preclude an individual property right in the principal from arising. Because no property right exists, no taking occurs within the meaning of the fifth amendment of the United States Constitution and Iowa Constitution, article 1, section 9.

The ethical issue is addressed and answered in a formal opinion of the American Bar Association Standing Committee on Ethics and Professional Responsibility. See ABA Formal Ethics Opinion 348, July 23, 1982. Amendments to the Iowa Code of Professional Responsibility proposed by the ISBA will conform to the standard outlined in the ABA opinion. Moreover, because the IOLTA fund does not take client property, no ethical

duty issues to obtain client consent to establishing an IOLTA account of the nature proposed. Nevertheless, lawyers are and will be urged to notify their clients of the program, and publicity to inform the public about it is anticipated. The determination by the lawyer in his or her professional judgment in applying the standard to determine what funds should be placed in an IOLTA account is the same standard of ordinary prudence that governs lawyer conduct in making other ethical judgments. We do not believe it is necessary or desirable to adopt a different standard.

We also determine that the program should be mandatory rather than voluntary on the part of lawyers. Like the Client Security and Attorney Disciplinary System and the Continuing Legal Education program, the IOLTA program should involve all members of the Iowa bar in their role as officers of the judicial department and court. Experience of other jurisdictions has also demonstrated

that a mandatory program is more cost-effective and holds greater promise of meeting the public need involved.

We therefore adopt an IOLTA program of the general nature proposed by the ISBA, with modifications reflected in the exhibits attached to this order. We reject the objections to the extent they are not obviated by this action.

Funds received in the IOLTA program initially will be expended primarily to assist in providing legal services to the poor in civil cases. Subsequently, the use of funds may be extended by the court to other public purposes related to improving the administration of justice in Iowa. Any expenditure of funds will be limited to governmental, tax-exempt purposes approved by the supreme court. Because of constitutional and policy considerations, funds will not be expended for legal services to the poor in criminal or juvenile cases.

It is therefore ORDERED:

1. Effective July 1, 1985, Disciplinary Rules 9-102 and 9-103 shall be amended as shown in exhibit A which is attached and made a part of this order.

2. A Lawyer Trust Account Commission with rules as set out in exhibit B, attached and made part of this order, shall be established as a commission of this court.

3. The commission shall take whatever steps are necessary to insure compliance of the IOLTA program with requirements of the Internal Revenue Code for tax-exempt status and with regulations of the Federal Reserve System.

4. The Commission shall report from time to time the status of administrative procedures necessary to implement the program and shall make such recommendations as may be appropriate.

5. The commission shall also take such steps as may be appropriate prior to July 1,

1985, to publicize to all lawyers of the state the manner in which the IOLTA program will function.

Dated this 28th day of December, 1984.

THE SUPREME COURT OF IOWA

By /s/ W.W. Reynoldson
W.W. Reynoldson, Chief Justice

Copies to:

Francis H. Becker
Iowa State Bar Association
West Publishing Company
Members of the Supreme Court
State Court Administrator
Edward Ronwin
William A. Shuminsky
Charles A. Gunderson
Roger D. Colton, Community Action Research Group, Inc.
Steve D. St. Clair, Legal Services Corp. of Iowa
Ray V. Bailey
Karon Perlowski, Youth Law Center, Inc.
Jay H. Honohan
Bruce G. Mountain
James D. Birkenholz
Mike Christensen
Janet Bryan-Galloway
William Wheatcraft
David L. Wetsch
Lynne E. Brady
Herbert S. Conlon
Code Editor

(The rules set forth in the following exhibit, which is part of the foregoing Order, contained words deleted from the former rule by hyphen marks and underlining of all new text. The deleted words have not been reproduced herein and the underlining has been discarded).

EXHIBIT A

DR 9-102 Preserving Identity of Funds and Property of a Client.

(A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, except retainer fees paid on a regular and continuing basis, shall be deposited in one or more identifiable interest-bearing trust accounts maintained as set forth in DR 9-102 (C). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service charges may be deposited therein.

(2)Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his client's funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the

lawyer and render appropriate accounts to the client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(C) Each trust account referred to in DR 9-102(A) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Federal Savings and Loan Insurance Corporation. Interest-bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made without

delay when such funds are required, subject only to any notice period which the depository institution is required to reserve by law or regulation.

(1) A lawyer who receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds that are nominal in amount or reasonably expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Commission established by the Supreme Court of Iowa. A lawyer may, but shall not be required to, notify the client of the intended use of such accrued interest.

(2) All client funds shall be deposited in the account specified in division (C)(1) unless they are deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest, net of any

transaction costs, will be paid to the client; or

(b) A pooled interest-bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to the client.

(3) In determining whether to use the account specified in division (C)(1) or an account specified in division (C)(2), a lawyer shall estimate, using ordinary prudence, whether the funds to be invested could be utilized to provide a significant positive net return to the client, as determined by consideration of the following factors:

(a) The amount of interest which the funds would earn during the period they reasonably are expected to be deposited;

(b) The cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest ac-

cruing to a client's benefit; and

(c) The capability of financial institutions described in division (C) to calculate and pay interest to individual clients.

(4) As to accounts created under division (C)(1), lawyers or law firms shall direct the depository institution:

(a) To remit interest or dividends, net of any service charges or fees, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission;

(b) To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of service charges deducted, if any, and the account balance(s) of the period for which the report is made.

(5) The Lawyer Trust Account Commission shall prepare and file an annual report with the Supreme Court of Iowa that summarizes the commission's income, grants and operating expenses, implementation of its purposes, and any problems arising in the administration of the program established by division (C) of this rule.

(6) The provisions of division (C) shall not relieve a lawyer or law firm from any obligation imposed by these rules with respect to safekeeping of client's funds, including the requirements of division (B) that a lawyer shall promptly notify a client of the receipt of the client's funds and shall promptly pay or deliver to the client as requested all funds in the possession of the lawyer which the client is entitled to receive.

DR 9-103 Required Books and Records; Required Certificate.

(A) Every lawyer engaged in private prac-

tice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate compliance with DR 9-102. Books and records relating to funds or property of clients shall be preserved for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9-103(A) shall certify, in such form as the Supreme Court of Iowa may prescribe, that the lawyer or the law firm maintains books and records as required by DR 9-103(A).

EXHIBIT B

LAWYER TRUST ACCOUNT COMMISSION

RULE 1. COMPOSITION

A. Members. The Lawyer Trust Account Commission shall consist of seven members, four of whom shall be members of the bar of Iowa having their principal offices in this state. Three members shall be residents of this state who are not lawyers.

B. Appointment. The members shall be appointed by the Supreme Court of Iowa.

C. Terms. The term of office shall be for three years except that two of the members first appointed shall serve for an initial term of one year and two of the members first appointed shall serve for an initial term of two years. Each member shall continue to serve until a successor is appointed and qualified. No member may serve for longer than two (2) successive terms and until a successor is appointed and qualified.

D. Vacancies. Vacancies shall be filled by appointment of a person to serve for the unexpired portion of the vacant term.

RULE 2. POWERS AND DUTIES

A. General. The commission shall have general supervisory authority over the administration of these rules.

B. Receipt and investment of funds. The commission shall receive funds from lawyer's interest-bearing trust accounts and make

appropriate temporary investments of such funds pending disbursement of them. All funds received shall be held by the commission as an agency of the supreme court.

C. Disbursement of funds. The commission shall disburse funds received as follows:

1. Such sums as are necessary for the employment of staff and administration of activities authorized under these rules.

2. The remaining funds for the tax-exempt public purposes which the supreme court may prescribe from time to time consistent with Internal Revenue Code regulations and rulings.

D. Records and reports. The commission shall maintain adequate books and records reflecting all transactions and shall submit quarterly reports of its financial and other activities to the supreme court. At least once a year, and at such additional times as the supreme court may order, the commission shall file with the supreme court

a written report reviewing in detail the administration of the fund during the year together with an audit of the fund certified by an Iowa certified public accountant.

RULE 3. OFFICERS

A. Chairperson. The court shall designate from among the members of the commission a chairperson who will serve as such at the pleasure of the court.

B. Other officers. The commission may elect other officers as it deems appropriate and may specify their duties.

RULE 4. DIRECTOR

A. Appointment. The commission may appoint an executive director to serve on a full or part-time basis at the pleasure of the commission and to be paid compensation as the commission shall determine.

B. Duties. The director shall be responsible and accountable to the commission for the proper administration of these rules.

C. Services. The director may employ persons

or contract for services as the commission may approve.

RULE 5. COMPENSATION AND EXPENSES

Members of the commission shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. All expenses of the operation ofthe commission shall be paid from funds the commission receives from lawyer's interest-bearing trust accounts or income earned thereon.

RULE 6. DISPOSITION OF FUNDS UPON DISSOLUTION

If the Lawyer Trust Account Commission is discontinued, any funds then on hand shall be transferred to its successor agency or organization qualifying under the Internal Revenue Code, if any, for distribution for the purposes specified under rule 2 or, if there is no successor, to the general fund of the State of Iowa.

RULE 7. SUPPLEMENTAL RULES

Subject to approval of the supreme court, the commission may make and adopt rules not inconsistent with these rules to govern the conduct of its business and performance of its duties.

84-1464

NO. 84-1641

Office - Supreme Court, U.S.
FILED
APR 17 1985
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners,

vs.

SUPREME COURT OF IOWA,

Respondent.

RESISTANCE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

THOMAS J. MILLER
Attorney General of Iowa

*BRENT R. APPEL
Deputy Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319
(515) 281-5164

ATTORNEYS FOR RESPONDENT

April 12, 1985
*Counsel of Record

QUESTIONS PRESENTED

1. Whether rulemaking by a state supreme court establishing an Interest On Lawyers Trust Account program is a judgment appealable to this Court under 28 U.S.C. § 1257.

2. Whether an Interest On Lawyers Trust Account program violates due process of law where the fund is derived only from interest on pooled accounts where individual client principal is so small or held for such a short period of time that transactions and maintenance costs preclude crediting of interest to individual clients.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
CONSTITUTIONAL PROVISIONS INVOLVED.....	iii
REASONS FOR DENYING THE WRIT.....	3
I. RULEMAKING BY A STATE SUPREME COURT ESTABLISHING AN INTEREST ON LAWYERS TRUST ACCOUNT PROGRAM IS NOT A JUDGMENT APPEALABLE TO THIS COURT UNDER 28 U.S.C. § 1257.....	3
II. NO SUBSTANTIAL CONSTITUTIONAL QUESTIONS HAVE EMERGED IN THE COURTS REGARDING SIMILAR IOLTA PROGRAMS.....	5
CONCLUSION.....	9

TABLE OF AUTHORITIES

	Page
In re Interest on Trust Accounts, 402 So.2d 389 (Fla. 1981).....	6,8
In re Petition of the Iowa State Bar Association, No. 84-1641 (Iowa 1984).....	5
In re Petition of the Minnesota State Bar Association, 332 N.W.2d 151 (Minn. 1982).....	6
Rapp v. Committee on Professional Ethics, 504 F.Supp. 1092 (S.D. Iowa 1980).....	3
Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719 (1980).....	3
Warth v. Selden, 422 U.S. 490 (1975).....	3
Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155 (1980).....	6,7,8

CONSTITUTIONAL PROVISIONS

United States Constitution,

Fifth Amendment:

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be

taken for public use, without just compensation.

Fourteenth Amendment:

Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . .

NO. 84-1641

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners,

vs.

SUPREME COURT OF IOWA,

Respondent.

RESISTANCE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA CONSTITUTIONAL PROVISIONS

Respondent the Supreme Court of the State of Iowa respectfully prays that this Court deny Petitioners' request that a Writ of Certiorari issue to review rulemaking by the Iowa court establishing an Interest On Lawyers Trust Account Program in Iowa.

STATEMENT OF FACTS

On September 25, 1984, the Iowa State Bar Association filed with the Iowa Supreme Court a document entitled Application to Amend the Code of Professional Responsibility and to Create A Lawyer Trust Account Commission. On October 12, 1984, the Iowa Supreme Court invited briefs from "any interested organization, agency, or person."

The Petitioners in this proceeding filed a brief with the Iowa Supreme Court in opposition to the proposed rulemaking and participated in oral argument before the Court. On December 12, 1984, the Court entered an order amending the Iowa Code of Professional Responsibility to establish an IOLTA program.

The Petitioners now seek a writ of certiorari to the Iowa Supreme Court challenging the constitutionality of the IOLTA program.

REASONS FOR DENYING THE WRIT

I. RULEMAKING BY A STATE SUPREME COURT ESTABLISHING AN INTEREST ON LAWYERS TRUST ACCOUNT PROGRAM IS NOT A JUDGMENT APPEALABLE TO THIS COURT UNDER 28 U.S.C. § 1257.

Upon application by the Iowa State Bar Association, and after notice and comment, the Iowa Supreme Court promulgated generally applicable disciplinary rules establishing a mandatory IOLTA program in Iowa. See Iowa Code of Professional Responsibility, DR 9-102, 9-103, as reproduced in the Petition for Writ of Certiorari, Exhibit A. In promulgating disciplinary rules regulating the practice of law in a state, a state supreme court is exercising a legislative function. Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719, 731 (1980).

This Court is not the proper forum to launch an attack on legislative actions by a state supreme court. The proper avenue for obtaining review of judicial rulemaking is an action in federal district court where a

particularized complaint may be considered in light of a properly developed factual record. Rapp v. Committee on Professional Ethics and Conduct, 504 F.Supp. 1092, 1097 (S.D. Iowa 1980).

The issue of standing in this case illustrates the impropriety of allowing Petitioners to proceed under 28 U.S.C. § 1257. At this stage of the proceeding, it is not clear whether any of the Petitioners actually maintain trust accounts that would be within the scope of the challenged disciplinary rules. As a result, petitioners may lack standing to litigate. Warth v. Selden, 422 U.S. 490 (1975). Moreover, even if the parties do have standing, sound principles of constitutional adjudication require that the impact of the rules on these particular parties should be developed in a proper forum before the constitutional issues are presented to this Court for authoritative determination.

II. NO SUBSTANTIAL CONSTITUTIONAL QUESTIONS HAVE EMERGED IN THE COURTS REGARDING SIMILARLY STRUCTURED IOLTA PROGRAMS.

As noted by the Iowa State Bar Association in its brief to the Iowa Supreme Court supporting the challenged rulemaking, the underlying premise of Iowa's IOLTA program is that lawyers' pooled trust accounts consist of multiple deposits which are so small in amount or held for so short a period of time that it is not practicable to allocate earnings thereon to individual clients. Brief of Iowa State Bar Association, at 8. In re Petition of the Iowa State Bar Association, No. 84-1641 (Iowa 1984). Indeed, the trust accounts become capable of earning sufficient interest solely because of the pooling of numerous deposits which would otherwise individually produce interest in amounts insufficient to pay the administrative costs of recovery. See Iowa Code of Professional Responsibility, DR 9-102(c)(1)-(3).

No court of last resort has found any constitutional infirmity in a similarly structured IOLTA program. The two leading state supreme court decisions uphold income creating IOLTA programs from due process attack on the ground that clients are not deprived of any constitutionally protected property interest where but for an IOLTA program, no interest could be accumulated for the benefit of individual clients because of administrative costs. See In re Petition of the Minnesota State Bar Association, 332 N.W.2d 151, 158 (Minn. 1982); In re Interest on Trust Accounts, 402 So.2d 389, 395 (Fla. 1981).

The Petitioner suggests that the rulemaking by the Iowa Supreme Court is contrary to Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155 (1980). In Beckwith, this Court considered whether the state of Florida could retain over $100,000 in interest earned on $1,812,145.77 that was held by the court in an interpleader

proceeding pursuant to a state statute. Under the circumstances presented, the Court held that where a state statute required deposit of funds with the court in order for the deposits to obtain statutory protection from the claims of creditors and others, the state could not retain interest earned on the account without violating due process of law. 449 U.S. 164-65. Beckwith, however, is easily distinguishable from the present case.

First, administrative costs associated with crediting earned interest to the proper parties in Beckwith obviously would not have exceeded the earned income of over $100,000. Under the Iowa IOLTA program, however, the earned interest on pooled trust accounts becomes available to the state only where the amounts are so nominal and held for such a short period of time that it is not administratively feasible to credit earned interest to individual clients. See Iowa Code of Professional Responsibility, DR 9-102(c)(1). Since Iowa's program creates

income where there had been none before and the income thus created would not have been available to benefit a client under any set of circumstances, Beckwith has no application. See In re Interest on Trust Accounts, supra, at 395.

Second, the money in Beckwith was required to be placed in an interpleader fund in order to obtain statutory protection. Under the IOLTA program in Iowa, however, no lawyer is required to establish a lawyer's trust account. They are voluntarily established for the convenience of lawyers and their clients. Access to the courts may be completely obtained by any and all lawyers on behalf of any and all clients without use of a trust account. As a result, no "taking" of property under Beckwith principles will occur through operation of Iowa's IOLTA program. See In re Interest on Trust Accounts, supra, at 396.

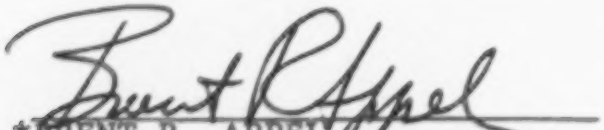
Because of the lack of controversy over income generating IOLTA programs in the courts, there is no substantial basis for granting a certiorari petition in the present case. Even if the issues were worthy of review, the Court should await the development of a body of case law in the lower courts that illuminate differing approaches to the constitutional issues in a variety of settings.

CONCLUSION

For the above reasons, the petition for a writ of certiorari in the above-captioned matter should be denied.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



*BRENT R. APPEL
Deputy Attorney General
Hoover State Office Bldg.
Des Moines, Iowa 50319
(515) 281-5164

ATTORNEYS FOR RESPONDENT

*Counsel of record

Office - Supreme Court, U.S.
FILED
APR 17 1985
ALEXANDER L. STEVAS,
CLERK

(3)

No. 84-1464

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners,

vs.

SUPREME COURT OF IOWA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

PETITIONERS' REPLY BRIEF

EDWARD RONWIN
P.O. Box 3585
Urbandale, Iowa 50322
(515) 223-8819
Petitioner pro se

DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ and BRUCE G. MOUNTAIN, 974-73rd Street
West Des Moines, Iowa 50265
(515) 223-6000
Petitioners pro se

10 pd

TABLE OF CONTENTS

	Page
Table of Contents	i
Table of Authorities	i
Argument	1
I. Jurisdiction Does Lie Herein Under 28 U.S.C.§1257	1
II. There Is A Substantial Constitutional Question In This Case	5
Conclusion	11
Appendix	

TABLE OF AUTHORITIES

Cases

	Page
Garner v. Pearson, 374 F.Supp. 580 (M.D. Fla. 1973)	2
In re Interest on Trust Accounts, 402 So.2d 389 (Fla. 1981)	6,7,8
In re Petition of the Minnesota State Bar Association, 332 N.W.2d 151 (Minn. 1982)	6
Rapp v. Comm. on Professional Ethics & Conduct, 504 F.Supp. 1092 (S.D. Iowa 1980)	3

TABLE OF AUTHORITIES-CONTINUED

	Page
Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719 (1980)	2,4
Warth v. Seldin, 422 U.S. 490 (1975)	4,5
Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)	7,10
UNITED STATES STATUTES	
28 U.S.C. §1257	1
MISCELLANEOUS	
The News Bulletin, Nov., 1984, published by the Iowa State Bar Association	8

No. 84-1464

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD RONWIN, DAVID L. WETSCH, MIKE CHRISTENSEN, JAMES D. BIRKENHOLZ AND BRUCE G. MOUNTAIN,

Petitioners

vs.

SUPREME COURT OF IOWA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA

PETITIONERS' REPLY BRIEF

ARGUMENT

I. Jurisdiction Does Lie Herein Under 28 U.S.C. §1257

The first of the two questions presented by the Respondent argues that this Court is an improper forum because Respondent's

No. 84-1464

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

EDWARD ROMWIN, DAVID L. WEISCH, MIKE
CHRISTENSEN, JAMES D. BIRKENHOLZ AND
BRUCE O. MONTAIN,

Petitioners

vs.

SUPREME COURT OF IOWA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF IOWA

PETITIONERS' REPLY BRIEF

ARGUMENT

I. Jurisdiction Does Lie Herein Under
28 U.S.C. §1257

The first of the two questions presented
by the Respondent argues that this Court
is an improper forum because Respondent's

promulgation of the mandatory IOLTA is a rule-making exercise allegedly legislative in character, Respondent's Brief at 3-4. While rule-making that falls legitimately within Respondent's power would be a legislative function, Supreme Court of Virginia v. Consumers Union of the U.S., 446 U.S. 719, 731 (1980), the rule promulgating a mandatory IOLTA in Iowa consists of two components: (1) a regulation of the manner by which attorneys are required to handle their client trust accounts, and (2) a component that goes beyond the regulation of the practice of law and orders a regular, continuous and wholly arbitrary taking of clients' monies not belonging to Respondent which taking is either a tax or a condemnation; i.e., the exercise of a power outside the rule-making authority of Respondent. The venerable maxim of equity applies: "Equity looks to substance rather than form," Garner v. Pearson, 374 F.Supp. 580, 585

(M.D. Fla. 1973). Respondent's Order (see Petition, Appendix) does regulate the client trust accounts of attorneys, but it also orders unconstitutional takings of interest earned on clients' principal.

Respondents question petitioners' standing, Respondent's Brief at 4. While part of the thrust of petitioners' challenge concerns the unconstitutional injury that Respondent's Order will inflict upon third parties; i.e., on clients whose funds are held in attorney trust accounts, the attorneys are mandatorily required to assist that unconstitutional taking under pain of disciplinary action (see Petition at A-4, and Exh. A to Respondent's Order at A-8 to A-15), which consideration creates "..a significantly concrete dispute...against the Iowa Supreme Court...as enforcers of the Iowa Code of Professional Responsibility for Lawyers..," Rapp v. Comm. on Professional Ethics & Conduct, 504 F. Supp. 1092, 1101 (S.D.Iowa 1980),

citing Supreme Court of Virginia v. Consumers Union, supra, 100 S.Ct. at 1977, n.15 (446 U.S. at 736, n. 15). In Warth v. Seldin, 422 U.S. 490 (1975), this Court considered questions of standing and this Court explained that standing required the plaintiff to suffer, "..some threatened or actual injury resulting from the putatively illegal action ...," 422 U.S. at 499. The involvement of petitioners in the unconstitutional taking is now threatened and after July 1, 1985 will become actual, Respondent's Order at A-6 to A-7, Petition. Unlike the situation in Warth where none of the petitioners had an interest in any real property in the town whose zoning was under attack, Warth, supra, 422 U.S. at 504, petitioners here are mandatorily required to take part in the unconstitutional scheme, Respondent's Order at A-4, Petition. Therefore, that the injury to petitioners may be more indirect than to clients does not preclude stand-

ing, Warth, supra, 422 U.S. at 504-505, particularly as "..the asserted injury [threatens to be or will become actual on July 1, 1985 and thereafter] is the consequence of [Respondent's] actions, [and]... prospective relief will remove the harm," Warth, supra, 422 U.S. at 505.

II. There Is A Substantial Constitutional Question In This Case

Respondents state their premise for Iowa's IOLTA on p. 5 of their Brief. Contrary to Respondent's theme upon which Respondent's rest their justification for Iowa's mandatory IOLTA, it is both feasible and simple to allocate earnings on small amounts or on amounts held for short periods of time in pooled accounts to the individual clients. Petitioners' Brief filed with Respondent demonstrated that the calculations for allocation of costs and earnings can be easily performed on a hand-held pocket calculator,

Petitioners' Brief filed with Respondent, at 14-17.

In alleged support of its argument that no constitutional infirmity afflicts Iowa's IOLTA, Respondent points to the, "..two leading state supreme court decisions uphold[ing] income creating IOLTA programs from due process attacks...," Respondent's Brief at 6. The cited decisions are: In re Petition of the Minnesota State Bar Association, 332 N.W.2d 151 (Minn. 1982) and In re Interest on Trust Accounts, 402 So.2d 389 (Fla. 1981).

What Respondent fails to explain is that Minnesota's IOLTA and Florida's IOLTA are worlds apart. Like Iowa, Minnesota's IOLTA is mandatory (see Iowa State Bar Association ("ISBA") Brief filed with Respondent at 4); i.e., the client has no choice over whether the interest earned on his funds are to be returned to him or whether they are to be taken by the Minnesota Supreme Court through its agent, and the attorney has no choice

but to carry such accounts. On the other hand, Florida's IOLTA is voluntary, 402 So.2d at 393; i.e., the lawyer can either join in the IOLTA plan or stay out. Moreover, Florida adopted a voluntary program out of concern for this Court's decision in Webb's Fabulous Parmacies v. Beckwith, 449 U.S. 155 (1980). Thus, the Florida Supreme Court explained, In re Interest on Trust Accounts, supra, 402 So.2d at 393:

> In addition to these matters, a new consideration which affects the program in light of the Foundation's request that we make it mandatory is the Supreme Court's 1980 decision in Webb's Fabulous Pharmacies, Inc. v. Beckwith. That consideration is whether the earnings on clients' funds are "property" of the clients which constitutionally cannot be taken from them without compensation. The dictates of the fifth and fourteenth amendments to the United States Constitution, as articulated in Webb's, obviously cannot be ignored in framing any program involving a state-directed use of income generated on private funds.

III

> Taking all factors into account, we adopt these concepts for a voluntary program designed to generate interest

on lawyer's trust accounts.
(emphasis added in this paragraph).

Petitioners' attack a mandatory IOLTA, but agree that a "..voluntary program might pass muster.." under the Constitution, Petitioners' Brief at 14-15.

Just as Respondent attempts to obscure the essential distinction between a mandatory and a voluntary program, (as above), so Respondent's agent, ISBA, which promoted a mandatory IOLTA before Respondent, published a map of the United States on the first page of the November, 1984 issue of ISBA's News Bulletin which showed all of the states of the United States that to that time had adopted IOLTA plans. However, no distinction was made in coloring between the mandatory plans (then adopted in four states: Arizona, California, Minnesota and Washington; see p. 4 of ISBA's Brief before Respondent) and the voluntary plans (then adopted by 29 states). A copy of said map is placed in the Appendix hereto. Since that time, some

five other states have adopted IOLTA's, of which only Iowa's is mandatory. Four states have considered and refused to adopt any IOLTA (see map, App. hereto). As admitted in ISBA's Brief before Respondent at 14:

> The majority of those states which have implimented a voluntary program have enrolled less than 20 percent of the attorneys eligible to participate. (emphasis supplied).

Since the states which have adopted voluntary IOLTA plans or have rejected any plan at all constitute over 85 percent of the states that have acted on the IOLTA question, and as less than 20 percent of the eligible attorneys have opted to join such voluntary programs, it is obvious that IOLTA's in general and mandatory IOLTA's in specific are as popular as the plague, Petitioners' Brief filed with Respondent at 26. It is that discomforting fact which Respondent is loath to admit.

Several pages of Respondent's Brief are devoted to convincing this Court that the

Beckwith case does not apply, Respondent's Brief at 6-8. The potent response is that the quotation from the Florida Supreme Court's decision quoted at 7-8, supra, clearly demonstrates that the Florida Court considered Beckwith to be highly germane to the nature of the taking in an IOLTA plan and in consequence said court shunned a mandatory program.

Lastly, the plea that this Court should await development "..of a body of case law in the lower courts..," Respondent's Brief at 9, should be rejected. In Iowa, the threatened unconstitutional activity is real and on July 1, 1985 it will become actual, and the unconstitutional activity is actual at present in four States. Furthermore, some States with voluntary plans or that have no plans and are reviewing the question might be tempted to convert to, or adopt mandatory plans. The harm is present, real and calls for the intervention

of this Court.

CONCLUSION

For the foregoing reasons, and those presented in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Edward Ronwin

David L. Wetsch

Mike Christensen

James D. Birkenholz

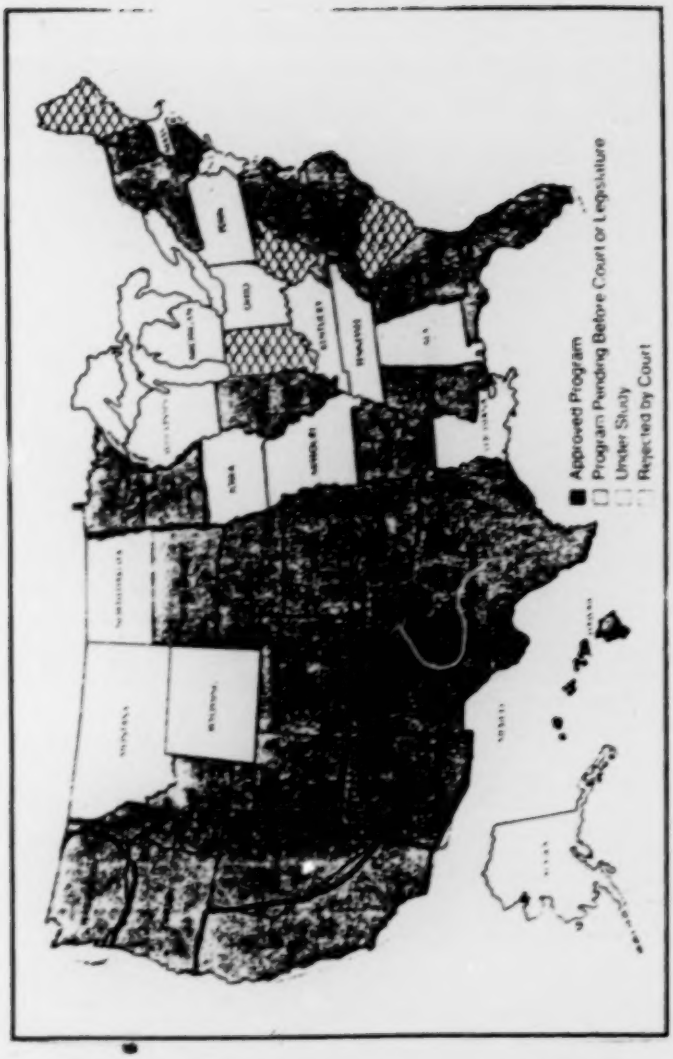
Bruce G. Mountain

Petitioners pro se
Attorneys at Law (Iowa)

Box 3585, Urbandale, Iowa 50322
(515) 223-8819

and

974-73rd Street
West Des Moines, Iowa 50265
(515) 223-6000



From page 1 of The News Bulletin of November, 1984, published by the Iowa State Bar Association

BEST AVAILABLE COPY